

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ERNESTINE KEMPEN  
*Plaintiff,*

v.

COSTCO WHOLESALE  
CORPORATION  
*Defendant.*

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CIVIL ACTION NO. \_\_\_\_\_

**DEFENDANT COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL**

Defendant, COSTCO WHOLESALE CORPORATION ("Costco"), files this Notice of Removal under 28 U.S.C. §§ 1441, 1446, and 1332, and respectfully shows the Court the following:

**I.  
Introduction**

1.1 On November 23, 2020, Plaintiff Ernestine Kempen filed a personal injury lawsuit against Costco in the 57<sup>th</sup> Judicial District of Bexar County, Texas under Cause No. 2020CI22812. *Plaintiff's Original Petition, Ex. 1.* Plaintiff alleges that she suffered injuries when she "slipped on the wet premises causing severe injuries to her body" while walking in the Costco warehouse located at 15330 IH-35N, Selma, Texas. *Id.*, at § IV. As a result of her claimed bodily injuries, Plaintiff seeks to recover damages for: past and future medical expenses; disfigurement; past and future physical pain; and past and future mental anguish. *Id.*, at § VI.

1.2 Plaintiff's state court action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332 and which may be removed to this Court in accordance with 28 U.S.C. § 1441. This is a civil action in which the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

1.3 Service of Citation of Plaintiff's Original Petition on Defendant Costco was executed on January 14, 2021. *See Service of Process Transmittal, Ex. 2.* Costco filed its Original Answer in state court on February 8, 2021. *See Defendant Costco Wholesale Corporation's Original Answer to Plaintiff's Original Petition, Ex. 3; State Court Docket Sheet, Ex. 4.*

## **II. The Parties**

2.1 Plaintiff is a Texas citizen, who resides in Bexar County, Texas. *Plaintiff's Original Petition*, at § II, **Ex. 1.**

2.2 Defendant Costco is a Washington Corporation with its principal place of business in the State of Washington. *See Franchise Tax Account Status, Ex. 5.*

## **III. Procedural Requirements for Removal**

3.1 Removal is timely, as this Notice is filed within 30 days of Costco receiving service of summons and Plaintiff's Original Petition on January 14, 2021. *See* 28 U.S.C. § 1446(b)(1). Because the 30 days after service ended on a weekend day, Costco's deadline was on the next weekday. Fed. R. Civ. P. 6. Because Monday, February 15<sup>th</sup> was a legal holiday - president's day – the deadline became Tuesday, February 16<sup>th</sup>. *Id.* As such, Costco's removal is timely.

3.2 Written notice of the filing of this Notice of Removal is being given to Plaintiff and her counsel as required by Texas law. Further, Costco is filing a copy of this Notice with the Clerk of the Court for Bexar County, Texas—where Plaintiff's cause was originally filed. *See Costco's Notice of Filing of Notice of Removal, Ex. 6.*

3.3 Costco has submitted a copy of all processes, pleadings, and orders to this Court as required by 28 U.S.C. § 1446(a).

**IV.  
Venue**

4.1 Venue in this district is proper because the Northern District of Texas, San Antonio Division, includes Bexar County. Bexar County is the county where the alleged incident occurred and where the original lawsuit is pending. *Plaintiff's Original Petition*, at § III.

**V.  
Jurisdictional Basis for Removal**

5.1 Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

5.2 First, complete diversity of citizenship exists between the parties. Plaintiff represents that she is a Texas resident. *Plaintiff's Original Petition*, at § II, **Ex. 1**. Costco is the only named Defendant in this lawsuit. *See id.* Costco is a Washington Corporation with its principal place of business in the State of Washington. *Franchise Tax Account Status, Office of Texas Comptroller, Ex. 5*. Costco is therefore deemed a citizen of Washington for diversity purposes. *See* 28 U.S.C. § 1332(c). For these reasons, the parties are completely diverse, and removal is appropriate on this ground.

5.3 Second, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In determining whether the amount in controversy has been met, the general rule is that the sum claimed by the plaintiff controls if the claim is apparently made in good faith. *Okeke v. Auto. Fin. Corp.*, 2016 U.S. Dist. LEXIS 196918, \*16, 2016 WL 11582509 (W.D. Dist. Tex. Feb. 3, 2016) (citing *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89, 58 S. Ct. 586, 82 L. Ed. 845 (1938)). Here, Plaintiff represents to the state Court that she seeks monetary

damages of at least \$1,000,000.00. *Plaintiff's Original Petition*, at ¶ 21, *Ex. I*. As such, the amount in controversy requirement for removal is apparent on the face of Plaintiff's pleading.

**VI.**

**Jury Demand**

6.1 Costco asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Costco Wholesale Corporation prays that this Notice of Removal be deemed sufficient and that the proceedings attached hereto be removed from the 57<sup>th</sup> Judicial District Court in Bexar County, Texas to the docket of this Honorable Court.

Respectfully submitted,

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By: /s/ Robert A. Valadez  
Robert A. Valadez  
State Bar No. 20421845

ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing was forwarded in accordance with the Texas Rules of Civil Procedure on the 16th day of February 2021, to:

**VIA EMAIL & ESERVE:**

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/s/ Robert A. Valadez  
ROBERT A. VALADEZ